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No. 05-1120

In The
Supreme Court of the United States

COMMONWEALTH OF MASSACHUSETTS, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

BRIEF OF THE U.S. CONFERENCE OF MAYORS, NATIONAL ASSOCIATION OF COUNTIES, AMERICAN PLANNING ASSOCIATION, AND THE CITY OF SEATTLE, WASHINGTON, AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICI CURIAE*[1]

The U.S. Conference of Mayors represents over 1100 U.S. cities with populations of 30,000 or more. The Conference promotes the development of effective urban policy, strengthens federal-city relationships, and creates a forum in which mayors can share ideas and information. The Conference historically has played a leadership role, calling early attention to urban problems and pressing successfully for solutions. In June 2005, the Conference endorsed the U.S. Mayors Climate Protection Agreement, which urges the federal government and state governments to enact policies to decrease global warming pollution levels, including efforts to reduce greenhouse gas emissions from motor vehicles.

The National Association of Counties (NACo) was created in 1935, and its membership totals more than 2,000 counties, representing over 80 percent of the nation's population. NACo acts as a liaison with other levels of government, works to improve public understanding of counties, serves as a national advocate for counties, and helps counties find innovative solutions to the challenges they face. The association is involved in a number of special projects that address specific issues of importance to counties, including issues relating to the environment and sustainable communities.

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[1] The parties have consented to the filing of this brief and letters reflecting that consent have been filed with the Clerk of the Court. This brief was not authored in whole or in part by counsel for a party, and no person or entity other than *amici*, their members, and their counsel made a monetary contribution to the preparation or submission of this brief.

The American Planning Association (APA) is a public interest organization founded in 1978 to advance the art and science of planning at the local, regional, state, and national levels. It represents more than 38,000 planners, officials, and citizens involved, on a day-to-day basis, in formulating and implementing planning policies and land use regulations. The APA encourages its members to combat global warming in several ways, including the design of transportation systems that promote sustainability by reducing dependence on fossil fuels.

The City of Seattle – the largest city in the Pacific Northwest, with a population of 572,000 – has a long history of concern for environmental protection and global warming in particular. Seattle is especially vulnerable to the impacts of climate change, in part because its municipal water supply and hydroelectric system are both dependent on annual snowpack accumulations in the Cascade mountains, which have already declined by 50 percent since 1950. Seattle's electricity supply is essentially climate neutral, and actions to reduce climate pollution emissions are one of the city's highest priorities.

As local officials and planners, *amici* and their members will be the first responders for the variety of disasters that climate change may create, such as the deadly heat waves that strike with special force in urban areas, and the storm surges that threaten heavily populated coastal municipalities. Local governments have a special responsibility to protect, rescue, and rebuild after natural cataclysms of the kind that are likely to increase as the earth warms. They also must grapple with the daily effects of climate change: unreliable municipal water supplies because of droughts or flash floods, and heat-induced air pollution that violates federal standards. For these and

other reasons, *amici*'s interest in this case is strong, and they submit this brief in support of the petition for certiorari to assist the Court in its consideration of the case.

SUMMARY OF ARGUMENT

The questions presented by this case are worthy of review due to (1) their extraordinary importance; (2) the badly fractured ruling by the appeals court below, together with the absence of any further opportunity for judicial clarification from other circuits; and (3) the U.S. Environmental Protection Agency's incoherent explanation for its position, which contravenes the plain text of the Clean Air Act, as well as the legal conclusions reached by two previous EPA General Counsels.

It is difficult to imagine issues of federal statutory law of greater importance, or more deserving of this Court's review, than the questions presented here. Greenhouse gases threaten a potential public-welfare catastrophe. The leading voices of concern come from within the scientific community, whose overwhelming consensus position is that we must act now before the window of opportunity closes.

Nearly 50,000 citizens submitted comments to EPA regarding the 1999 petition to regulate greenhouse gases under the Clean Air Act. In response, EPA declined to reveal its view as to whether greenhouse gases are reasonably anticipated to endanger public health or welfare under section 202 of the Act. Instead, it articulated a reading of the Act that contravenes the exceedingly broad definition of "air pollutant" in section 302(g), and contradicts the Act's

express reference to carbon dioxide as an "air pollutant" in section 103(g).

Although the legal issues before it were squarely and cleanly presented, the federal appeals court produced as badly fractured a judicial ruling as one can possibly receive, with one judge affirming on standing grounds, another judge affirming for policy reasons nowhere mentioned in the statute, and a third judge authoring a lengthy and well-reasoned dissent. This splintered panel ruling was capped by a rehearing denial by the barest of margins (4-3).

Because of their exceptional importance, the legal issues raised by the Petition for Writ of Certiorari deserve a straightforward answer on the merits. And because the U.S. Court of Appeals for the D.C. Circuit has exclusive jurisdiction over these matters, there will be no "percolation" of the issues in other circuits. Review by this Court is necessary to provide the citizenry and our elected officials with a clear judicial answer on the critical legal question of whether the federal Clean Air Act authorizes regulation of motor vehicle emissions that contribute to global warming. Those who bear the greatest risk from global warming, as well as those who share the economic burden of reducing greenhouse gases, deserve no less.

Finally, review by the Court is particularly appropriate in view of the federal government's recent statement that federal law preempts State and local officials from regulating greenhouse gas emissions from motor vehicles. Unlike the usual situation in which a federal agency disavows legal authority, which typically would leave the matter to the States, EPA's position in this case takes on far greater significance.

ARGUMENT

I. THE QUESTIONS PRESENTED ARE OF EXTRAORDINARY IMPORTANCE

"Indeed, if global warming is not a matter of exceptional importance, then those words have no meaning."
App. A-96 (Judge David Tatel, dissenting).

Judge Tatel is right. How else could one describe a potential catastrophe that could bring melting ice caps, rising sea levels, more severe hurricanes and other storms, epidemic increases in cholera, malaria, dengue fever, and other diseases, increased deaths from heat waves, more frequent floods and droughts, crop damage with resulting starvation, and devastating harm to wildlife and the natural environment? It could be a disaster of Biblical proportions.[2] State and local officials will be the first responders to these disasters, and their communities will suffer the consequences of any failure to prevent or mitigate the damage.

The scientific community has reached a near-unanimous consensus on three points: "global warming is occurring; the primary cause is fossil fuel consumption; and if we don't act now to reduce greenhouse gas emissions, it will get worse."[3]

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[2] *See, e.g.*, Paul R. Epstein, *Is Global Warming Harmful to Health?*, SCIENTIFIC AMERICAN 50 (Aug. 2000) (describing the consequences of global warming); Kelly Quirke, *Global Warming and Increasing Catastrophe Losses: The Changing Climate of Financial Risk*, 12 J. Ins. Reg. 452, 453-54 (1994) ("A litany of many of the predicted impacts of climate change – increasingly intense and frequent hurricanes, rising sea levels, coral bleaching, widespread droughts of long duration, record freezes, floods and storms – are becoming common headlines.").

[3] Eileen Claussen, *An Effective Approach to Climate Change*, 306 SCIENCE 816, 816 (Oct. 2004) [hereinafter Claussen]; *accord* Andrew C. Revkin, *Federal Study Finds Accord on Warming*, N.Y. TIMES, May 3,

(Continued on following page)

In fact, the scientific community is the leading voice of concern:

> [I]n most of the cases, it's the lay community that is more exercised, more anxious. * * * But in the climate case, the experts – the people who work with climate models every day, the people who do ice cores – they are *more* concerned. They are going out of their way to say, "Wake up!"[4]

Conservative predictions are that average global temperatures will climb between 4.5 and seven degrees Fahrenheit by the end of the century.[5] These numbers might seem small, but small shifts in global temperature can have enormous effects. Indeed, there is only about a

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2006, at A23 ("A scientific study commissioned by the Bush administration concluded yesterday that the lower atmosphere was indeed growing warmer and that there was 'clear evidence of human influences on the climate system.'"); Naomi Oreskes, *Beyond the Ivory Tower: The Scientific Consensus on Climate Change*, 306 SCIENCE 1686, 1686 (Dec. 2004) (the consensus position is shared by "all major scientific bodies in the United States whose members' expertise bears directly on the matter," including the National Academy of Sciences, the American Meteorological Society, the American Geophysical Union, and the American Association for the Advancement of Science); *id.* (of the 928 peer-reviewed papers published between 1993 and 2003 on climate change, none disagreed with the consensus position).

[4] *See* Elizabeth Kolbert, FIELD NOTES FROM A CATASTROPHE: MAN, NATURE, AND CLIMATE CHANGE 131-132 (Bloomsbury Publishing 2006) [hereinafter FIELD NOTES FROM A CATASTROPHE] (quoting the Co-Director of Princeton University's Carbon Mitigation Initiative).

[5] U.S. Department of State, U.S. CLIMATE ACTION REPORT 2002 at 82 (May 2002) [hereinafter CLIMATE ACTION REPORT], *available at* http://www.epa.gov/globalwarming/publications/car/index.html; *accord* Richard A. Kerr, *News Focus: Three Degrees of Consensus*, 305 SCIENCE 932, 932 (August 13, 2004) ("almost all the evidence points to 3°C [or 5.4°F] as the most likely amount of warming for a doubling of CO_2 . . . by century's end.")

ten degree increase between today's average global temperature and that at the height of the last ice age.[6] The United States is likely[7] to warm between three and nine degrees Fahrenheit during this century.[8]

The harm caused by global climate change will be especially challenging for state and local governments, for several reasons. First, as has been made tragically clear in the United States in the wake of recent man-made and natural disasters, municipal governments are responsible for orderly evacuations from fires and floods, and local officials must plan and reconstruct neighborhoods or entire cities afterwards. Global warming is likely to mean more disasters like intense hurricanes and high storm surges crashing into America's eastern seaboard, which is one of the most urbanized parts of the country and one of the fastest growing. Population shifts alone make global warming a pressing municipal government problem.

Municipalities, particularly large ones, also have to grapple with the less cataclysmic but still threatening challenges of climate change, such as higher temperatures

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[6] FIELD NOTES FROM A CATASTROPHE, *supra* note 4, at 107.

[7] In the scientific dialogue on climate change, the words "likely" and "very likely" have particular meaning. For example, in the Climate Change Impacts Reports prepared for the federally sponsored U.S. Global Change Research Program, "likely" indicates a likelihood of around 60 to 80 percent, and "very likely" indicates a likelihood of around 80 to 100 percent. *See* NATIONAL ASSESSMENT SYNTHESIS TEAM, CLIMATE CHANGE IMPACTS ON THE UNITED STATES: THE POTENTIAL CONSEQUENCES OF CLIMATE VARIABILITY AND CHANGE, REPORT FOR THE U.S. GLOBAL CHANGE RESEARCH PROGRAM 5 (2001) [hereinafter CLIMATE CHANGE IMPACTS], *available at* http://www.usgcrp.gov/usgcrp/Library/nationalassessment/foundation.htm.

[8] CLIMATE ACTION REPORT, *supra* note 5, at 84.

that lead to more smog and federal sanctions for violating clean air standards; or sudden ferocious rainstorms that overwhelm and pollute municipal water supplies and flood transportation networks; or droughts that disrupt hydropower transmission and deplete local reservoirs. As one federal government report put it:

> Climate change has greater potential to add to existing stresses in urban areas due to the impact of rising sea level and elevated storm surges on transportation systems, increased heat-related mortality and morbidity associated with temperature extremes, increased ground-level ozone pollution problems associated with warming, and the impact of precipitation and evaporation changes on water supply.[9]

As discussed in more detail below, cities and counties across the United States face one or more of these challenges.

Rising sea level and storm surges: Increasing sea levels are one of the most certain results of climate change.[10] The Intergovernmental Panel on Climate Change (IPCC) has high confidence (a 67-95 percent degree of certainty) that higher sea levels around North America will lead to "enhanced coastal erosion, coastal flooding, loss of coastal wetlands, and increased risk from storm surges, particularly in Florida and much of the U.S. Atlantic coast."[11] In March 2006, scientists released new

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[9] CLIMATE CHANGE IMPACTS, *supra* note 7, at 111.

[10] *Id.* at 156.

[11] A REPORT OF WORKING GROUP II OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, SUMMARY FOR POLICYMAKERS CLIMATE CHANGE 2001: IMPACTS, ADAPTATION, AND VULNERABILITY 4 n.6, 16 (2001), *available at* http://www.ipcc.ch/pub/wg2SPMfinal.pdf.

studies showing a significant acceleration in the loss of mass from the world's great ice sheets, which is greatly increasing the threat of catastrophic increases in sea levels.[12]

Rising sea levels mean that by the turn of the next century, New York City's 100-year floods will instead occur every 19 years, and are likely to overwhelm the city's airports, highways, subways, and tunnels. Natural and human-induced changes, including the destruction of marshes, barrier islands, and wetlands over the last several decades, make the U.S. Gulf Coast particularly susceptible to damage from rising sea levels. The two- to five-fold increase in the rate of sea level rise predicted by the IPCC "would very likely have dramatic effects on population centers, infrastructure, and natural ecosystems in the low-lying Gulf and South Atlantic Coastal zone."[13]

By 2010, 73 million people will live in the nation's most hurricane-prone counties, most of them in the Southeast United States. They will be in the path of more destructive storms because climate change likely will increase the intensity, if not the frequency, of Atlantic hurricanes.[14] Allstate Insurance Corporation no longer

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[12] Randolph E. Schmid, *Melting Ice Threatens Sea-Level Rise*, Associated Press, Mar. 24, 2006 (reporting on new studies published in the journal "Science"); *see also* Tim Flannery, THE WEATHER MAKERS 6, 144 (Atlantic Monthly Press 2005) (discussing recent studies showing Greenland's glaciers are melting ten times faster than previously thought); Quirin Schiermeier, *A Sea Change*, 439 NATURE 256, 256-58 (Jan. 2006) (the Greenland ice sheet currently is shrinking by an estimated 50 cubic kilometers each year, posing a risk of catastrophic shifts in ocean currents).

[13] CLIMATE CHANGE IMPACTS, *supra* note 7, at 139.

[14] CLIMATE ACTION REPORT, *supra* note 5, at 100-01.

issues new policies to homeowners in Florida, Louisiana, the New York City area, and the Texas Gulf Coast because of the high risk of hurricane destruction.[15] Climate change will thus contribute to a very dangerous mix of more people, stronger storms, and more damage.

Heat morbidity and pollution stresses: Not surprisingly, the IPCC notes that very hot days and more heat waves are "very likely" (a 90-99 percent chance) to occur as a result of climate change.[16] This would have a devastating effect on human health, particularly in urban areas. Cities are doubly at risk of heat waves because they tend to trap heat, cooling less at night and providing less relief to city dwellers, and because they tend to be home to poor and vulnerable populations.[17] EPA estimates that, under one climate change scenario, "excess weather related mortality" in a single year would mean the death of 1250 people in New York City, 600 people in St. Louis, and between 200 and 300 people in Atlanta, Dallas, and Los Angeles.[18]

Warmer weather also exacerbates pollution, particularly ground level ozone or smog, which is already a major health concern in our nation's cities and counties. The added stresses of climate change will harm the residents of these municipalities directly, as ozone levels and smog

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[15] Spencer S. Hsu, *Insurers Retreat from Coasts*, WASHINGTON POST, Apr. 30, 2006 at A1. *See also* Anthony Ramirez, *Allstate to Pare Home Policies Near Shore*, N.Y. TIMES, Mar. 10, 2006, at B4.

[16] WORKING GROUP II OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 11, at 8.

[17] CLIMATE ACTION REPORT, *supra* note 5, at 106.

[18] U.S. EPA, *Average Annual Excess Weather-Related Mortality for 1993, 2020, and 2050 Climate*, slide *at* http://yosemite.epa.gov/OAR/globalwarming.nsf/content/ResourceCenterPresentationsImpacts.html.

increase, and will put enormous strains on local governments.[19]

Water supplies: In 2000, the U.S. Department of Energy sponsored research to determine how climate change would alter the western United States. Researchers came to the disturbing conclusion that "even with a conservative climate model, *current* demands on water resources in many parts of the West will not be met under plausible future climate conditions, much less the demands of a larger population and a larger economy."[20] For instance, the Colorado River Reservoir system will fail to provide enough water to Southern California and inland areas by 2050. Hydroelectric power from the Colorado River will drop by as much as 40 percent. Warmer and drier summers increase the fire risk for the West, particularly the northern Rockies and the Southwest.[21]

While the West struggles with water scarcity (the result of less snow and less water storage in the snowpacks of western mountains), other regions could face unusual floods and the contamination of water supplies. Heavier rainfall in certain areas is a likely result of climate change.[22] Heavy rainfall means more storm water runoff, as the inundated ground cannot absorb the rainwater racing across it. In the Great Plains, runoff could contain "contaminants from fertilizers, herbicides,

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[19] CLIMATE CHANGE IMPACTS, *supra* note 7, at 133, 211-12, 238.

[20] Tim Barnett *et al.*, *The Effects of Climate Change on Water Resources in the West: Introduction and Overview*, 62 CLIMATIC CHANGE 1, 6 (2004), *available at* http://www.uwyo.edu/enr/enrschool/ENR4900_5900/Barnett%20et%20al.%202004.pdf.

[21] *Id.* at 6-7.

[22] CLIMATE ACTION REPORT, *supra* note 5, at 108.

pesticides, livestock wastes, salts, and sediments that reduce the quality of both surface water and groundwater drinking water supplies."[23] Heavy rains also increase the possibility of human exposure to water-borne diseases like cryptosporidium.

Global warming is not merely a future threat, but a present deadly reality. The World Health Organization estimates that anthropogenic (human-produced) warming already is killing up to 150,000 people each year due to malnutrition, malaria, and other maladies.[24] In addition to these ongoing public health consequences, global warming also is causing immediate harm to the environment.[25] And as explained above, the overwhelming scientific consensus is that global warming will significantly worsen.

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[23] CLIMATE CHANGE IMPACTS, *supra* note 7, at 204.

[24] Jonathan Patz *et al.*, *Impact of Regional Climate Change on Human Health*, 438 NATURE 310, 310 (Nov. 17, 2005) (World Health Organization estimates that "warming and precipitation trends due to anthropogenic climate change of the past 30 years already claim over 150,000 lives annually"); *id.* at 313 (citing A.J. McMichael *et al.*, COMPARATIVE QUANTIFICATION OF HEALTH RISKS: GLOBAL AND REGIONAL BURDEN OF DISEASE DUE TO SELECTED MAJOR RISK FACTORS 1543-1649 (World Health Organization, Geneva, 2004)).

[25] J. Alan Pounds *et al.*, *Widespread Amphibian Extinctions from Epidemic Disease Driven by Global Warming*, 439 NATURE 161, 165 (Jan. 12, 2006) (Scientists have a "very high confidence level" (greater than 99 percent) that global warming already has helped cause the loss of many species and poses "an immediate threat to biodiversity.").

II. PRIOR GRANTS OF CERTIORARI SHOW THAT THE QUESTIONS PRESENTED HERE ARE WORTHY OF REVIEW.

This Court repeatedly has reviewed important issues involving EPA's authority under our major environmental statutes, including the Clean Air Act. Just two years ago, the Court granted certiorari "to resolve an important question of federal law, *i.e.*, the scope of EPA's authority" under the Act, notwithstanding the absence of a circuit split. *Alaska Dep't of Envtl. Conservation v. EPA*, 540 U.S. 461, 482 (2004).

The Court also has granted review in cases implicating a single natural resource of special importance. *See Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 307, 320 (2002) (certiorari granted "[b]ecause of the importance of the case," based in part on the potential impact on a "uniquely beautiful" natural resource). *A fortiori*, review is warranted here, where global warming threatens human health, public welfare, and countless natural resources of exceptional importance.

This Court also has characterized as worthy of certiorari various issues regarding the allocation of regulatory jurisdiction among federal agencies, particularly on environmental matters. For example, in *Train v. Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976), the Court granted certiorari "[b]ecause of the importance of the issue" of whether EPA or the Atomic Energy Commission had authority to regulate effluent discharges from nuclear plants. *Id.* at 5. The case at bar raises similar issues regarding whether the Clean Air Act authorizes EPA to regulate greenhouse gas emissions from motor vehicles, notwithstanding the U.S. Department of Transportation's

authority to set fuel economy standards. As Judge Tatel observed in dissent, the regulatory regimes are not inconsistent, the Congress anticipated this regulatory overlap, and there is no reason to assume Congress exempted an entire class of pollutants from regulation under the Clean Air Act. App. A-41 to A-42.

Finally, the nationwide implications of the case further increase the importance of the issues and need for review. *See National Credit Union Administration v. First National Bank & Trust Co.*, 522 U.S. 479, 487 & n.3 (1998) (certiorari granted due to "the importance of the issues" in light of a nationwide injunction implementing the lower court rulings); *American Insurance Ass'n v. Garamendi*, 539 U.S. 396, 413 & n.6 (2003) (issue raised by a California law is important and worthy of review in part because several other States have passed similar laws). Because the D.C. Circuit has exclusive jurisdiction over petitions for review challenging determinations made under section 202 of the Clean Air Act (42 U.S.C. § 7607(b)(1)), the nationwide influence of its ruling confirms the need for close scrutiny.

III. EPA'S MISGUIDED AND SHIFTING POSITIONS AND THE DEEPLY FRACTURED JUDICIAL RULING BELOW PROVIDE FURTHER JUSTIFICATION FOR REVIEW.

Public interest and concern with global warming is enormous, with citizens submitting almost 50,000 comments to EPA regarding the 1999 petition to regulate greenhouse gases under the Clean Air Act. App. A-63. Most of the commenters supported the request. *Id.* Some thirty parties – including twelve States with a total population exceeding 100 million people – filed the Petition for Review in the D.C.

Circuit challenging EPA's rejection of the 1999 petition. Ten States have weighed in on the other side, confirming that the case involves a fundamental legal dispute among two large State coalitions.

In the face of this monumental public concern, where have the agency and the appeals court left us? EPA produced an utterly incoherent explanation for why it declines to reveal its views on whether greenhouse gases are reasonably anticipated to endanger public health or welfare under section 202. As explained in the Petition for Certiorari, EPA's analysis contravenes the Act's exceedingly broad definition of "air pollutant" in section 302(g) (42 U.S.C. § 7602(g)), and contradicts the Act's express reference to carbon dioxide as an air pollutant in section 103(g) (42 U.S.C. § 7403(g)). In addition to being wholly untethered to the text of the Act, EPA's position contravenes the legal conclusions reached by two previous EPA General Counsels. App. A-68.

On appeal, the legal issues were squarely and cleanly presented, but the D.C. Circuit rendered a badly fractured ruling, with one judge affirming on standing grounds, another affirming on policy grounds nowhere mentioned in the statute, and a third judge authoring a lengthy and blistering dissent, capped by an en banc rehearing denial by the barest of margins (4-3), with two judges not participating.

After all this, our citizenry has no definitive judicial ruling on the critical legal issue of whether EPA may regulate greenhouse gases under section 202. The States, other government bodies, and numerous environmental groups that filed this case; the 50,000 commenters on the 1999 petition to EPA; the scientific community; and the American people deserve better. These tens of thousands

of citizens have attempted an active "participation in collective power"[20] of the government on one of the most pressing public policy issues of our time, only to be handed a thoroughly confused and misguided reaction from the bureaucracy and a fractured judicial response.

Finally, review by the Court is especially appropriate in light of the federal government's recent assertion that federal law preempts State and local officials from regulating greenhouse gas emissions from motor vehicles. Just last month, the National Highway Traffic Safety Administration (NHTSA) articulated its position that the federal Energy Policy and Conservation Act, which preempts State regulation "related to fuel economy standards," 49 U.S.C. § 32919(a), applies to State and local laws limiting carbon dioxide emissions from motor vehicles. *See* 71 Fed. Reg. 17566, 17654-70 (April 6, 2006). In short, the federal government's current position is that EPA cannot regulate carbon dioxide emissions from motor vehicles under the Clean Air Act, and neither may any other level of government. Unlike the typical case of federal agency disavowal of legal authority, which normally would leave the matter to State and local officials, EPA's position here takes on far greater significance. *Amici* do not endorse NHTSA's reading of the Energy Policy and Conservation Act, but it cannot be denied that its reading dramatically raises the stakes in this case.

We respectfully request a straightforward answer on the critical legal issues raised by this case, and only this

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[20] Benjamin Constant, THE LIBERTY OF THE ANCIENTS COMPARED WITH THAT OF THE MODERNS, in Constant: Political Writings 307 (Biancamaria Fontana trans. & ed., 1988) (1816).

Court can provide it. There will be no "percolation" of the issue in other circuits due to the D.C. Circuit's exclusive jurisdiction over petitions for review challenging determinations made under section 202. *See* 42 U.S.C. § 7607(b)(1). Without review by this Court, this momentous issue will be left in legal limbo.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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